VIA ECFS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Charter Communications, Inc.'s	)	MB Docket No. 12-328
	)	
Request for Waiver of 47 C.F.R. § 76.1204(a)(1) with the Commission	)	CSR-8470-Z CS Docket 97-80
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COMMENTS OF SAMUEL J. BILLER

The purpose of this filing is to provide comments from an interested consumer in response to the Commission's Media Bureau Action on Charter Communication's request for a two-year waiver of the integrated security ban on the above referenced proceedings.

In implementing Section 629, the Commission sought to spur competition and expand consumer choice by separating the security and navigation functions of equipment used to receive MVPD programming. While it can be argued that the ban on integrated security did not spur extensive retail competition to MVPD provided set top boxes, there are a number of companies selling thousands of boxes quarterly that include CableCARD slots to support MVPD programming. In its latest quarter, TiVo Inc. sold 28,000 boxes that include CableCARD security.[1]

[1] TiVo.com Trend Sheets – Q2 2013, Page 2 of 5, 28,000 TiVo-Owned Gross Additions.

I believe the Commission should deny Charter's waiver request since it is proposing a proprietary hardware chip that would not work beyond Charter and possibly one other MVPD.[2] Although Charter claims it would continue support of CableCARD for retail devices, granting this waiver would violate the common reliance principle and place retail devices at a competitive disadvantage just when retail boxes are finally overcoming industry imposed obstacles to achieve parity with operator leased boxes.[3] Charter apparently recognizes that consumers are not interested in purchasing consumer devices that are not nationally portable. So it is proposing a scheme in which retail devices would rely on CableCARD while Charter can use a different, lower-cost security method. The FCC should reject any such "separate but equal" proposal as a false promise. Rather than vitiate common reliance, the Commission should adopt an open-standard, IP-based successor to CableCARD that would significantly benefit the retail navigation device market and consumers by offering competition and choice.

The common reliance principle is grounded in the Commission's determination that a competitive market in navigation devices cannot develop, as mandated by Congress, unless cable operators have a business incentive, supported by a regulatory incentive, to provide and support CableCARDs adequately. As the Commission correctly stated, "[A]t the heart of a robust retail market for navigation devices is the reliance of cable operators on the same security technology and conditional access interface that consumer electronics manufacturers

[2] Charter does not explain whether its solution would work with Cablevision.

[3] For example, in Comcast territories, TiVo customers can now receive VOD, the lack of access to which has been used by cable operators to undermine consumers who want an alternative to an operator provided box but did not want to lose access to programming. Allowing Charter to use a different security scheme than retail will inevitably lead to situations where services are offered to Charter supported devices but not CableCARD devices. Switched digital is a good example of what can be expected when an operator tries to look at retail devices in the rear view mirror and swerve away from common reliance.

must rely on in developing competitive navigation devices."[4] Allowing Charter to implement a lower-cost alternative to CableCARD while not at the same time providing a lower-cost alternative to CableCARD that works across all MVPDs for retail navigation devices will undermine the competitive environment and further degrade the competitive marketplace for retail navigation devices.

The integration ban and the improved CableCARD regulations published in 2011 were designed to help improve CableCARD installations in retail navigation devices until a successor technology is adopted. Rather than steadfastly enforcing common reliance, however, the Commission has granted a number of waivers of the separable security requirement. Each waiver builds upon previous requests as does Charter's waiver request and increasingly threatens the common reliance principle. For obvious reasons, these waivers heighten my concern that as fewer devices are made to comply with the integration ban and operators rely less commonly on the "identical security function", the Commission threatens the retail navigation market. As the Commission has made clear: "One of the overriding purposes of the Commission's navigation device rules is to allow for national portability of consumer electronics devices purchased at retail regardless of the security standard that any specific cable operator uses."[5] A granting of Charter's waiver request for a security standard that only works with one, or possibly two, cable operators violates the spirit of the Commission's navigation device rules for national portability.

Charter claims that it wants to implement downloadable security just like its new Chief Executive Officer (CEO), Tom Rutledge, did when he was at Cablevision. However, to

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[4] *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd 6794, 6807 at ¶ 27 (2005) ("Second Report and Order").
[5] See, e.g., 47 C.F.R. §§ 76.1204(a)(2), (b).

my knowledge, the FCC never determined whether Cablevision's approach satisfied its rules for common reliance. The FCC granted a temporary waiver to Cablevision under very different circumstances. Cablevision began implementing its approach in 2001, several years *before* the FCC clarified that the integration ban would require reliance on an identical security function. The FCC was persuaded that to "require Cablevision to modify devices that it brought to market three years before the rule was changes to require an identical security function would only serve to punish Cablevision for seeking to comply with the Commission's rules in a timely manner."[6] Needless to say, Charter in 2012 is not in the same position as Cablevision was in 2001. Charter is well aware that any downloadable solution must achieve compliance with the integration ban in a way that furthers the goals of assuring the availability of competitive retail devices.

Enforcement of Section 629 does not hinder technology advances. If retail devices were as easy to set up and configure as leased devices, many more consumers would use them. I fully support an open-standard, IP-based, downloadable security successor to CableCARD and feel that the implementation of a lower-cost security standard would foster additional retail competition in the marketplace since it would remove the friction associated with the acquisition of a hardware CableCARD by a consumer. To satisfy the Commission's separable security requirement, however, any successor conditional access system must be open, non-proprietary, nationally portable, available for use by unidirectional as well as bidirectional plug and play devices, and relied upon by multichannel video programming providers and retail set-top box makers alike. The concept of common reliance means that all MVPDs and all retail set-top box manufacturers rely on the same conditional access security system. A scheme in which every operator is free to use a different security system and as

[6] Cablevision Waiver Extension (January 16, 2009), paragraph 7.

long as that security system is “available” for license to a consumer electronics manufacture is not common reliance as it does not provide for national portability. National portability is a key component of common reliance.

CONCLUSION

Charter’s waiver request should be denied because it does not comply with the integration ban in a way that furthers the goals of Section 629. Consumer electronics companies will not manufacture retail devices that only work with one or two cable operators in certain geographical areas because consumers won’t buy such products. Consequently, Charter’s “solution” will hurt, not help, retail availability of navigation equipment by placing retail equipment at a competitive disadvantage in terms of cost, support and innovation. Charter’s motivation to support CableCARD will diverge from its own business interests which is precisely what common reliance is designed to prevent. Instead of granting a waiver that would undermine retail alternatives, the FCC should urge the industry to come up with an IP-based downloadable successor to CableCARD that everyone can use.

Respectfully submitted,

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